

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-
BENJAMIN VIALIZ,

AMENDED
SUPPORTING AFFIDAVIT
08 Cr. 0009 (AKH)

Defendant.

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State of New York)
County of Kings) ss:

Benjamin Vializ, being duly sworn deposes and says:

1. I am the defendant herein.

SUPPRESS PHYSICAL EVIDENCE

2. I was arrested on or about October 30, 2007, and am charged with possession of a firearm as a felon [18 USC @ 922(g)(1)].

3. On or about October 30, 2007, at 142nd Street and Brook Avenue in the Bronx [that night was "mischief night" before Halloween] I exited a friend's apartment building. I was approached by 2 kids who I know in passing from the neighborhood. They asked me several questions. One kid had a "machete" knife. The two kids then started running in the direction of, and passing a metal garbage container on the side of a building.

4. I was standing on the street approximately 100 yards away from the garbage container. The police arrived, and the garbage container was searched by one or more police officers. I never ran from the area, but was nevertheless placed under arrest after a

police officer stated a gun was found in the garbage container.

5. When I was arrested I had violated no law. I was arrested for no lawful reason, and without probable cause. When I was arrested I was searched by the police, without my permission, and a motorola cel phone, cel phone clip, and a battery were taken from me as the result of the search. The seizure of these items were illegal by the police because the police had no reason to arrest me. I was just standing on the street behaving lawfully. I did not run from the scene, and I did not throw anything inside the garbage container. I was approximately 100 yards from the container at the closest point. Upon information and belief the Government seeks to use these unlawfully obtained items against me at my trial.

SUPPRESS POST ARREST STATEMENTS

6. Additionally, after my unlawful arrest, I made a written statement to the police which stated in essence that I saw Luigi and Julio start running from the police, and Luigi threw something inside the garbage can. The police also alleged that after my unlawful arrest I stated "I ruined my life," "My life is over," "You guys ruined my life," "It was the little one." All of my post arrest statements should also be suppressed because they were made after I was illegally arrested by the police in the first place.

6. The Government has advised me that it will use at my trial statements made by me to the police after I was arrested on October 30, 2007.

WHEREFORE, defendant Vializ moves to suppress physical

evidence seized, post arrest statements, and such other relief as is just.

Deponent,

/s

Sworn to and Subscribed before
me this 23rd Day of April, 2008.

/s

Attorney for Defendant Vializ

Alan Seidler